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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 349

MARY COOLEY ROY, *Petitioner*,

v.

LEONARD C. ROY, SR., *Respondent*.

Petition for Writ of Certiorari to the Supreme Court of Florida

---

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In The

Supreme Court of the United States

October Term, 1954

No.

Mary Cooley Roy, *Petitioner,*

v.

Leonard C. Roy, Sr., *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Mary Cooley Roy, petitioner, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered in the above-entitled case on June 15, 1954.

CITATIONS TO OPINIONS BELOW

The memorandum opinion of the trial court contained in the final decree (R. 909-910) is unreported and is printed in Appendix B hereto, infra P. 12-13. The opinion of the Supreme Court of Florida, printed in Appendix B hereto, infra. P. 11-12, is reported in 73 So. (2d) 294.

JURISDICTION

The judgment of the Supreme Court of Florida was entered on June 15, 1954 (R. 935). Rehearing was denied on July 5, 1954. (R. 942).

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3), since a right set up and claimed under the Constitution and a statute of the United States, the according of full faith and credit to a prior judgment of the District of Columbia court, was denied petitioner.

QUESTION PRESENTED

Where court of District of Columbia granted to wife a judgment for limited divorce on ground of husband's desertion, and in said judgment made a finding that she "was without fault in the separation of the parties," there being no question as to the jurisdiction of the District of Columbia Court either over the subject matter or the parties, is such judgment, with such finding, properly pleaded, entitled to full faith and credit in the courts of Florida so as to constitute a bar to a divorce suit filed there by the husband on the ground of wife's habitual intemperance and misconduct toward him during the same period as that covered in the District suit?

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Constitutional provision involved is Article 4, Section 1 (full faith and credit clause), as implemented by 28 U.S.C., Section 1738. They are printed in Appendix A, infra, p. 10.

STATEMENT

On September 24, 1952, Leonard C. Roy, hereinafter called Respondent or the husband, filed suit for divorce against his wife, Mary Cooley Roy, hereinafter called Petioner or the wife, in the Circuit Court of Palm Beach County, Florida (R. 1-10), App. C, infra, p. 12-13. The bill of complaint alleged that the parties were married in 1922 and lived together until their separation in July, 1945; that there were two living children of the marriage, both of whom were adults and had their own homes. The matrimonial domicile of the parties during their married life was in Washington, D. C., and most of the material events occurred there.

The complaint further charged petitioner with various acts of excessive drinking and sought the divorce not only

on the grounds of cruelty and habitual intemperance, but also on the ground of desertion, claiming that petitioner by her conduct had forced respondent to leave her and that accordingly she was, constructively, the deserter.

On October 20, 1952, petitioner filed a motion for stay of the proceedings (R. 10-29), setting forth that on September 18, 1952, about a week before the institution of the case at bar, she, the wife, had filed suit in the District of Columbia against the husband for a limited divorce on the grounds of two years' desertion of her by him, and cruelty. The motion sought the stay of the present suit because the District of Columbia Court had first acquired jurisdiction of the parties and of the issues involved. Attached to the motion were exemplified copies of the District of Columbia proceedings (R. 15-26).

On October 21, 1952, the Circuit Court entered an order denying the motion for stay of proceedings (R. 30). On October 24, 1952, petitioner answered the complaint, denying respondent's allegations and charges, again setting up the District of Columbia suit, and seeking dismissal of the complaint. She did not counterclaim for a divorce (R. 30-40).

There were no further material steps taken in the present case until after the conclusion of the District of Columbia suit. At the beginning of the trial of the Florida suit on February 4, 1953, petitioner filed an amendment to her answer (R. 41-56) setting up the fact that the District of Columbia litigation had terminated in her favor by the entry of a judgment on December 19, 1952, awarding her a limited divorce. Attached to the amendment were exemplified copies of the further District of Columbia proceedings (R. 43-56), including the District of Columbia judgment (R. 52-54), App. C, infra, p. 19-21.

In this judgment the Court found that the husband had deserted the wife in 1945 and that the wife was without fault in the separation and had endeavored at all times to effect a reconciliation. The judgment awarded to the

wife the husband's half interest in real estate in the District of Columbia. The amendment to the answer asserted that the District of Columbia judgment was a bar to further prosecution of the present suit and sought dismissal of the latter. It also prayed for general relief.

On February 12, 1953, the Court entered a final decree granting a divorce to respondent and denying petitioner any alimony or counsel fees. The decree failed to reserve jurisdiction to award alimony in the future (R. 909-910), App. B, infra. p. 12-13. On appeal to the Supreme Court of Florida, that court affirmed (R. 932-933), App. B, infra, p. 11-12.

As hereinbefore shown, the federal question sought to be reviewed was raised by petitioner (a) by amendment to answer setting forth the District of Columbia judgment and pleading the same in bar of the Florida action (R. 41-56); (b) by argument at trial (R. 62-63), and the trial court's adverse decision in its final decree (R. 909); and (c) the contention in the court below, and its adverse ruling, as appears from its opinion (R. 932-933), App. B, infra, p. 11-12.

REASONS FOR GRANTING THE WRIT

The court below has decided a federal question in a way which is in conflict with applicable decisions of this court. It is the contention of the petitioner that the Court erred in declining to dismiss this suit because of the prior District of Columbia suit and judgment; that by so doing the Court failed to give full faith and credit to the District of Columbia judgment, as is required by the United States Constitution; and that respondent was precluded by the Washington, D. C., judgment from relitigating the issue of the effect of petitioner's alleged conduct, either by the doctrine of res judicata or by the doctrine of estoppel by judgment.

The cases in Florida and elsewhere are legion on the various phases of the application of the doctrines of res judicata and estoppel by judgment, in divorce cases, with relation to the full faith and credit clause of the Federal

Constitution. In the present situation, the parties in the District of Columbia suit and the Florida suit are the same, of course. The issues were the same, in that in order to prevail in the District of Columbia suit it was necessary for the wife to show that she was without fault in the separation between the parties. By her complaint in the District of Columbia suit (R. 17-19), App. C, infra, p. 16-18, she put in issue the question as to who was at fault in the separation. Respondent, in his complaint in the Florida suit, put in issue exactly the same point, claiming that by petitioner's conduct she forced him to leave and was the deserter. The issue first arose in the Washington, D. C., suit and was first determined in that suit in favor of the wife.

It is not material whether the bar against the relitigation of this issue is that of res judicata or of estoppel by judgment. There are fine distinctions between these two doctrines, which it is not material to solve in the present case. It appears that the Florida suit is predicated upon substantially the same cause of action as was the District of Columbia suit, and hence res judicata applies. However, if it is not considered that it was so predicated, then under the doctrine of estoppel by judgment, the fundamental issues common to both causes of action, and which were actually adjudicated in the prior litigation, cannot be relitigated.

Concisely summarized, the question common to both suits was whether the fault of the wife had caused the separation. The wife claimed that it had not and the husband contended that the wife's excessive drinking was the cause of the separation. The District of Columbia court first held that the wife was without fault and that the husband deserted her. This material issue could not be relitigated in the subsequent Florida suit and trial.

It seems clear that the Florida Court was required by the United States Constitution to give the Washington, D. C., judgment the same full faith and credit, i.e., the

same full effect which it would have had in a subsequent suit in the District of Columbia. See *Cheever* v. *Wilson*, 9 Wall. 108, 19 L. Ed. 604, wherein the court held that a decree of divorce by a court having jurisdiction of the parties and subject-matter, if valid and effectual in the state when rendered, must be given the same effect in other states.

It is apparent that relitigation of these issues would be barred in a subsequent District of Columbia suit. The outstanding District of Columbia case on this point is *Gill* v. *Gill* (1945) 79 U. S App. D. C. 357, 147 F. (2d) 154, which held that where wife brought action for divorce from bed and board, or, in the alternative, for separate maintenance, judgment for separate maintenance was a finality as to every matter which was offered and received to sustain or defeat the case.

> "Even if the [subsequent] suit is for a different cause of action, the right, question, *or fact* once so determined [in prior action] must, as between the same parties, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."

The court further held that the judgment, filed on October 24, 1941, was res judicata that wife was *justified in living apart from* her husband and was entitled to separate maintenance and a finding in the husband's subsequent action for divorce instituted on March 19, 1942, of desertion by the wife continuing for more than two years preceding institution of his action, and judgment granting husband a divorce for such desertion, could not stand.

It is likewise apparent in the instant case that the wife's alleged cruelty to the husband, if established, would have constituted a justification legally of his leaving her, and therefore would have been a defense in the District of Columbia suit for a limited divorce on the ground of two years' desertion. This appears from *Helvestine* v. *Helvestine* (1937), 67 App. D.C. 121, 89 F. (2d) 970:

Where, in wife's action for divorce, husband filed cross-bill praying for divorce a vinculo and for general relief, and court found that wife's cruelty justified husband in leaving, trial court under prayer for general relief had authority to award him a limited divorce.

In the instant case there can be no question but that in any subsequent litigation in the District of Columbia, the District of Columbia judgment would bar the husband from any attempt to assert that the wife was at fault in the separation of the parties; and from asserting that the husband had any justification or excuse (such as the wife's habitual intemperance) for deserting her. The District of Columbia court specifically found the opposite.

Therefore, since the Florida Courts are required by the full faith and credit clause of the United States Constitution to give the District of Columbia judgment the same effect that it would be given in the District of Columbia, it is apparent that the prior District of Columbia judgment is a bar to the attempted relitigation in Florida of the question of fault of the parties, including the alleged excessive drinking of the wife.

The landmark case in this Court on this subject is *Harding* v. *Harding* (1905), 198 U. S. 317, 49 L. Ed. 1066, 25 S. Ct. 679.

In that case the wife obtained in Illinois a decree for separate maintenance which contained a finding that she was living separate and apart from her husband *without fault on her part.* Thereafter, the California courts refused to recognize the Illinois decree as res judicata and as a bar in the husband's suit in California for a divorce on the ground of desertion. In this Court it was contended by the husband that the two issues were not identical, but the Court found that they were and reversed. The court's opinion, by Mr. Justice White, contains the following:

Referring to the Illinois decree:

> "... which decree necessarily conclusively settled that the separation was for cause and was without fault on the part of the wife." (198 U.S. 338).

So also does the Washington decree in the case at bar contain such a finding as to the wife.

Commenting upon the husband's contention:

> "... the proposition of facts upon which the argument rests admits simply to denying all effect to the Illinois decree." (id.)

So, too, does the proposition upon which respondent rests his argument in the case at bar result in denying all effect to the District of Columbia decree.

> "That the issue of willful desertion presented in the divorce action was identical with the issue of absence without fault presented in the Illinois maintenance suit is manifest." (id.)

Similarly, the determination by the Circuit Judge in the case at bar that petitioner had been guilty of cruelty to respondent is identical with the issue as determined by the District of Columbia court that she was without fault in the separation of the parties.

In this connection, it is to be noted that Section 403, Title 16 of the District of Columbia Code makes cruelty a ground for a limited divorce, and later, for enlargement into a decree of absolute divorce. Cruelty, therefore, constitutes "fault" under the law of the District of Columbia; and when the District of Columbia court determined that the wife was without fault, the later determination by the Florida court was directly to the contrary, and constituted a denial of full faith and credit to the prior District of Columbia finding and judgment.

The District of Columbia court first acquired jurisdiction of the parties and of the subject matter, and the District of Columbia judgment entered prior to the trial of this case constituted a bar to the continued maintenance of this suit and the latter should have been dismissed at final hearing.

In failing to give full faith and credit to the prior judgment of the District of Columbia court, the court below erred.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN ALEXANDER,
JOSEPH SITNICK,
Counsel for Petitioner

APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS CITED

Constitution, Article IV, Section 1:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved and the Effect thereof."

28 U. S. C., Section 1738, June 25, 1948, C. 646, 62 Stat. 947:

> State and Territorial statutes and judicial proceedings; full faith and credit.
>
> The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory of Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory, or Possession or copies thereof shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions they have by law or usage in the courts of such state, Territory or Possession from which they are taken.

APPENDIX B

OPINIONS AND JUDGMENT BELOW

(R 932-933)

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A. D. 1954—DIVISION A

MARY COOLEY ROY, *Appellant,*

v.

LEONARD C. ROY, *Appellee.*

PALM BEACH COUNTY
CASE NO. 25,024

Opinion filed June 15, 1954.

An appeal from the Circuit Court for Palm Beach, C. E. Chillingworth, Judge.

Wideman, Caldwell, Pacetti & Robinson and Manley P. Caldwell, for Appellant.

W. Q. Cain, for Appellee.

MATHEWS, J.:

This is an appeal from a final decree of divorce. One of the principal issues in this suit is that there had been filed and was pending at the time of these proceedings, a suit in Washington, D. C., for a divorce mensa et thoro. A judgment was entered in that suit whereby the wife received title to certain real property and claims that such suit operated as res judicata upon the final decree of divorce now under review or worked an estoppel by judgment as to the appellees cause of action.

The causes of action were entirely different. In the Washington, D. C. suit the appellant merely alleged desertion and cruelty as a ground for separate maintenance. In the Florida suit for divorce the appellee alleged habitual intemperance together with extreme cruelty and desertion as the grounds for divorce. The record shows that habitual intemperance was not an issue in the Washington, D. C. suit and it was an issue in the Florida suit, and the evidence was more than sufficient to sustain the Chancellor in finding that the appellant had been guilty of habitual intemperance. All of the assignments of error, pleadings, testimony and final decree of the Chancellor have been carefully reviewed, and the final decree of the Chancellor was without reversible error.

It is, therefore, ordered that the final decree of the Chancellor be and the same is hereby affirmed.

ROBERTS, C. J., TERRELL AND SEBRING, JJ., CONCUR.

(R 909-910)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. IN CHANCERY.

No. 30,147.

LEONARD C. ROY, *Plaintiff*,

v.

MARY COOLEY ROY, *Defendant*.

FINAL DECREE

This cause was again duly tried by the Court.

The record in the former suit, being Chancery No. 29,687, Palm Beach County, was accepted as a part of the record in this case.

These records present a tragic story of what was once a very happy married life, with two adult sons, one sympathetic with one parent, and one sympathetic with the other parent.

No useful purpose would be served in discussing the issues in the case, or the views of the Court upon these issues, except to say that it is the judgment of the Court that the testimony is ample to sustain the grounds of divorce alleged in the complaint in this suit. The proof is also sufficient to show that plaintiff, at the time of the institution of this suit, was a bona fide resident of Florida, and had been one for more than ninety days previous to that time, and that he is still a resident of Florida.

It is the view of this Court that the Washington Decree dated December 19, 1952, constitutes no bar to the entry of this decree.

Concerning alimony or a property settlement and counsel fees, it is apparent that this defendant has taken over the former home place in Washington, so that the plaintiff no longer has any interest in it. The defendant has an income of some three or four times greater than the income of plaintiff. The plaintiff is without assets except as to his clothing and automobile, and a few personal effects.

It is the view of the Court that it would not be equitable at this time to require the plaintiff to pay alimony or effect a further property settlement, or to pay counsel fees for counsel for the defendant, and that in any event, plaintiff does not have the ability to make such payments. Thereupon,

IT IS ORDERED that the equities of this cause are with the plaintiff; that the plaintiff be divorced from the defendant a vinculo matrimonii, with costs of this cause taxed against the plaintiff.

Copy furnished counsel.

DONE AND ORDERED this February 12, A.D. 1953.

C. E. CHILLINGWORTH,
Circuit Judge.

EXCERPTS FROM RECORD

APPENDIX C

On the 24th day of September, 1952, Bill of Complaint for Divorce was filed in the words and figures following, to wit:

Filed Sept. 24, 1952. J. Alex Arnette, Clerk of Circuit Court

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. IN CHANCERY.

No. 30,147.

(R 1-2)

LEONARD C. ROY, *Plaintiff*,

v.

MARY COOLEY ROY, *Defendant*.

BILL OF COMPLAINT FOR DIVORCE

Leonard C. Roy, a resident of West Palm Beach, Palm Beach County, Florida, brings this Bill of Complaint against Mary Cooley Roy, a resident of Washington, District of Columbia, and alleges:

1. The Plaintiff now resides in the State of Florida, and has resided in the State of Florida for more than ninety (90) days before the filing of this Bill of Complaint. The Plaintiff's place of residence is 305 South Flagler Drive, West Palm Beach, Palm Beach County, Florida. The Defendant's place of residence is Embassy Apartments, 1613 Harvard Street, N.W., Washington, District of Columbia. Both the Plaintiff and Defendant are over

the age of twenty-one (21) years, and neither of them is under any disability which would prevent the institution and maintenance of this suit.

2. The Plaintiff and Defendant were lawfully married, each to the other, at Alexandria, Virginia, on July 29, 1922, and the marital relationship and status created by said marriage continues to exist to this day.

3. The Plaintiff and Defendant lived and cohabited together as husband and wife from the date of their marriage, as aforesaid, until on or about July 27, 1945, except that during the period from on or about March 8, 1945, until on or about July 1, 1945, the Plaintiff was compelled to and did live separately and apart from the Defendant because of her misconduct as hereinafter stated. On or about July 27, 1945, the Plaintiff was compelled to and did leave the Defendant and the then home of the parties at 1613 Harvard Street, N.W., Washington, D. C., and to live elsewhere because of the misconduct of the Defendant toward the Plaintiff as hereinafter stated. The parties have not lived nor cohabited together as husband and wife since on or about July 27, 1945.

4. At all times since the marriage of the Plaintiff and Defendant, as aforesaid, and until the final separation of the parties on or about July 27, 1945, as aforesaid, the Plaintiff has conducted himself toward the Defendant as the kind, faithful, affectionate, dutiful and provident husband of the Defendant, and has at all such times discharged all duties incumbent upon him as such husband of the Defendant.

* * * * * * * * * *

Filed Sept. 18, 1952. Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(R 17-19)

MARY C. ROY, *Plaintiff*,
1613 Harvard Street, N.W., Washington, D. C.

v.

LEONARD C. ROY, SR., *Defendant*.

Civil Action No. 4215-52

COMPLAINT FOR LIMITED DIVORCE AND/OR SEPARATE MAINTENANCE
(Cruelty and/or Desertion)

The complaint of Mary C. Roy, respectfully shows to the Court as follows:

1. That she is an adult citizen of the United States and an actual bona fide resident of the District of Columbia, having been such resident for more than two years prior to the institution of this suit, which is filed herein in her own right, and since the separation of the parties hereto, the plaintiff has resided at 1613 Harvard Street, Northwest, Washington, D. C.

2. That the defendant, Leonard C. Roy, Sr., is likewise an adult citizen of the United States and a bona fide resident of the District of Columbia, but has been absent from the District of Columbia temporarily for at least six months, having been in West Palm Beach, Florida for the purpose of attempting to secure a divorce there; that his last known post office address, place of abode, and temporary residence is 305 South Flagler Drive, West Palm Beach, Florida.

3. That heretofore, on, to-wit, July 29, 1922, the plaintiff and the defendant, Leonard C. Roy, Sr., were lawfully married in Alexandria, Virginia, and of said marriage three children have been born, Leonard C. Roy, Jr., who is 28 years of age; Robert Roy, who is 26 years of age; and Donald B. Roy, who died in 1936 at the age of 2½ years.

4. That subsequent to the marriage of the parties hereto, they lived and cohabited together as husband and wife, until, to-wit, July 28, 1945, when the defendant, Leonard C. Roy, Sr., deserted the plaintiff while they were living at 1613 Harvard Street, Northwest, Washington, D. C., and said desertion has continued without interruption or cohabitation, and until the present time.

5. That the defendant, Leonard C. Roy, Sr., has treated plaintiff with extreme cruelty.

6. Plaintiff avers that the defendant, Leonard C. Roy, Sr., has failed and refused, and continues to fail and refuse, to adequately support and maintain the plaintiff, although well able so to do; and that defendant has an income of approximately $11,000.00 per annum.

7. That the defendant has carried on an illicit affair with another woman with whom he has openly consorted for many years, causing the plaintiff great emotional and nervous strain and distress, which has adversely affected the physical health of the plaintiff.

8. That the plaintiff and the defendant are the owners, as tenants by the entirety, of the premises known as 4425 Fessenden Street, Northwest, in the District of Columbia, together with household effects therein contained.

9. Plaintiff avers that she did not consent to the separation of the parties, that she was and is without blame and fault in the matter of the separation of the parties, and accordingly believes from all the facts and circumstances of this case that she is entitled to have a declaratory judg-

ment entered by this Court, determining the date and fault of the separation of the parties hereto to be resting with the defendant; that this action is brought under Section 2201 of the Judicial Code, 28 U.S.C., because there is an actual controversy now existing between the parties, in respect to which the plaintiff needs a declaration of her rights by this Court.

Wherefore, the premises considered, plaintiff prays the judgment of this Court:

1. That she be awarded a limited divorce from the defendant, Leonard C. Roy, Sr., on the ground of two years' desertion or on the ground of cruelty.

2. That the plaintiff be awarded alimony or separate maintenance, both pendente lite and permanently, from the defendant, Leonard C. Roy, Sr., for her support.

3. That, pendente lite and permanently, the plaintiff be awarded suit money, including counsel fees, and costs.

4. That she be awarded the ownership of the real estate and household effects located at 4425 Fessenden Street, Northwest, Washington, D. C.

5. That a declaratory judgment be entered herein, determining the date and fault of the separation between the plaintiff and the defendant.

6. And for such other and further relief as the nature of the case may require, and to the Court may seem just and proper.

• • • • • • • • • •

Filed Dec. 19, 1952. Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(R 52-54)

MARY C. ROY, *Plaintiff,*

v.

LEONARD C. ROY, SR., *Defendant.*

Civil Action No. 4215-52

JUDGMENT AWARDING LIMITED DIVORCE
(Two Years' Desertion)

This cause came on to be heard upon the pleadings filed herein, and the evidence adduced in open Court, and the Court having found:

(a) That the plaintiff, Mary C. Roy, is a resident of the District of Columbia, and has been such a resident for more than two years prior to the filing of her complaint herein.

(b) That the plaintiff and the defendant, Leonard C. Roy, Sr., were lawfully married in Alexandria, Virginia, on, to-wit, July 29, 1922, and of said marriage three children were born, Leonard C. Roy, Jr., now 28 years of age, Robert Roy, now 26 years of age, and Donald B. Roy, who died in 1936 at the age of 2½ years.

(c) That following the marriage of the parties they lived and cohabited together as husband and wife only in the District of Columbia; and that the District of Columbia is the only matrimonial domicile of the parties.

(d) That the defendant, Leonard C. Roy, Sr., without justification or excuse, deserted the plaintiff on, to-wit, July 28, 1945, while they were living at 1613 Harvard Street, Northwest, in the District of Columbia, and such desertion has continued without interruption or cohabitation for more than two (2) years prior to the filing of the compaint herein, and until the present time.

(e) That the plaintiff, Mary C. Roy, is without fault in the separation of the parties and has endeavored at all times to effect a reconciliation with the defendant.

(f) That the plaintiff and the defendant are the owners, as tenants by the entirety, of the premises known as 4425 Fessenden Street, Northwest, in the District of Columbia, together with household effects therein contained.

(g) And, that the plaintiff has established all of the other material facts alleged in her complaint.

The Court concludes, as a matter of law, that the plaintiff, Mary C. Roy, is entitled to a divorce a mensa et thoro from the defendant, Leonard C. Roy, Sr., on the ground of desertion for more than two years; and that the plaintiff is entitled to be awarded the real and personal property, known as premises 4425 Fessenden Street, Northwest, in the District of Columbia, together with the household furniture and furnishings therein contained.

It is, therefore, by the Court, this 19th day of December, 1952,

Ordered, Adjudged, and Decreed:

1. That the plaintiff, Mary C. Roy, be, and she hereby is, awarded a divorce a mensa et thoro from the defendant, Leonard C. Roy, Sr., on the ground of desertion for two years.

2. That the plaintiff, Mary C. Roy, be and she hereby is, awarded title to the real estate known as premises 4425 Fessenden Street, Northwest, in the District of Columbia, together with the household furniture and furnishings

therein contained, heretofore jointly owned by the plaintiff and the defendant as tenants by the entirety, subject however to all encumbrances of record.

*WALTER W. RYTRAIN,
U. S. District Judge.

Seen:

JOHN ALEXANDER,
Attorney for Plaintiff,

PETER G. CHACONAS,
Attorney appointed by the Court to Defend.

---

* This was obviously an error in transcribing the Judge's signature for the record. The U. S. District Judge's name should read "Walter M. Bastian."

FILED
OCT 16 195
HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 349

MARY COOLEY ROY,
Petitioner,

v.

LEONARD C. ROY, SR.,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Florida

---

BRIEF IN OPPOSITION

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In The

Supreme Court of the United States

October Term, 1954

No. 349

MARY COOLEY ROY,
Petitioner,

v.

LEONARD C. ROY, SR.,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Florida

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BRIEF IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Florida trial court contained in the final decree is unreported and is properly reproduced at pages 12 and 13 of the Petition for Writ of Certiorari.

The opinion of the Supreme Court of Florida is reported at 73 So. (2d) 294 and is properly reproduced at pages 11 and 12 of the Petition for Writ of Certiorari.

JURISDICTION

The judgment of the Supreme Court of Florida was entered on June 15, 1954 (R. 935). Rehearing was denied on July 5, 1954 (R. 942). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3).

QUESTIONS PRESENTED

1. Did the Florida court err in awarding an *absolute* divorce to the husband (respondent herein) where the wife (petitioner herein) fully participated in the proceeding by entering a general appearance, by filing pleadings, by retaining attorneys to represent her throughout the proceeding, by herself testifying and by producing the testimony of others, notwithstanding that a prior judgment was entered in the District of Columbia awarding a *limited* divorce to the wife on *ex parte* proof in a case where the husband was not served with process in the District of Columbia and where he had not lived for some eight months?

2. Whether, in an action for *absolute* divorce, the Florida court erred in not giving "full faith and credit" to a judgment for a *limited* divorce entered by the District of Columbia court

   (a) Where the cause of action and relief sought was different from the causes of action and relief sought in the Florida court; and

   (b) Where the defendant in the District of Columbia proceeding (respondent herein) was not personally served within the District of Columbia, did not enter his appearance, did not file any pleadings and did not retain an attorney to represent him.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Respondent does not question that petitioner relies on the full faith and credit clause of the Constitution as set forth in Section 1, Article IV, and as implemented by 28 U.S.C., Section 1738.

STATEMENT

Respondent believes that a restatement of the history of this case will clarify the underlying facts and the chronology of the proceedings.

This is a Petition for Writ of Certiorari from a final decree of absolute divorce in favor of respondent after two successive trials in the Florida trial courts of the same issues.

Each of the parties is of mature age, being approximately sixty as to respondent and approximately fifty as to petitioner. The parties were married in 1922 and have two adult sons. The matrimonial domicile was in Washington, D. C. The parties were separated from March 8, 1945 until July 1, 1945 because of the alleged excessive intemperance of petitioner. On or about July 27, 1945, respondent finally left petitioner for the same reason, so he claims, and so the Florida Court found. The parties have not lived or cohabited together as husband and wife since July 27, 1945.

The issues in this case were thoroughly tried twice in the Circuit Court of Palm Beach County, Florida, by the same Circuit Judge, in both of which cases petitioner appeared and defended. These two trials were in separate successive suits for divorce instituted by respondent against petitioner. The issues in each case were substantially the same.

On May 17, 1952 (in the first suit, Chancery No. 29687), respondent filed his bill of complaint for absolute divorce

against petitioner. In that case, respondent sought an absolute divorce on the grounds of habitual intemperance, extreme cruelty and desertion.

On June 20, 1952 (in the first suit) petitioner filed her Answer, Counter-claim and Motion to Dismiss. In her Answer, petitioner denied that respondent was a resident of Florida and denied the charges made against her in the complaint. In her Counter-claim, petitioner made several charges against respondent (none of which were ever proven), and alleged that respondent had previously sued her for divorce in the United States District Court for the District of Columbia, which former suit had been dismissed by stipulation of the parties. In her Motion to Dismiss, petitioner alleged an insufficiency of averments in the complaint for absolute divorce to show that respondent was a Florida resident, to state a claim upon which relief could be granted, and further alleged that none of the charges made in the bill possessed sufficient basis on which to predicate a divorce.

On July 14, 1952 (in the first suit), respondent filed his Answer to petitioner's Counter-claim, denying all charges made against him in the Counter-claim.

On September 10, 1952, the first suit was tried, and on September 16, 1952, the court entered a final decree in which it found

(a) That the former litigation in Washington, D. C., dismissed by stipulation of the parties, constituted no bar to the maintenance of a suit in Florida;

(b) That on the testimony, respondent would be entitled to a divorce; but

(c) That it was not satisfied that respondent was a bona fide resident of Florida because of lack of corroborating testimony.

The same decree specifically provided that the parties were given leave to use the testimony and depositions on

behalf of plaintiff and defendant in that particular cause, in any other cause which may be instituted in that court by either of the parties if the evidence were appropriate to the issues as formulated in any future suit. In said decree, the court awarded counsel fees to petitioner in the amount of $500.00, which was paid.

On September 18, 1952, two days after the entry of the above decree dismissing without prejudice the first Florida divorce suit, petitioner filed her suit against respondent in the United States District Court for the District of Columbia praying for a limited divorce and/or separate maintenance. Plaintiff alleged cruelty and desertion. Copy of the complaint, together with a summons, was mailed to Florida to be personally served on respondent in Florida, which was done, but the effect of which under the District of Columbia laws was simply service by publication. (D. C. Code, Title 13, Sec. 13-108). This method of service was made on the basis of the affidavit of petitioner's counsel which stated that from February, 1952, respondent had been a resident of Palm Beach County, Florida. Respondent did not enter an appearance in the District of Columbia case, and the case proceeded on *ex parte* proof.

On September 24, 1952, respondent filed his second suit for divorce against petitioner in Florida in the same court where the first suit had been filed, being Chancery No. 30,147. This is the suit as to the result of which petitioner seeks a Writ of Certiorari.

In this second suit, respondent sought a divorce on the same grounds as in the former suit, that is, habitual intemperance, extreme cruelty and desertion. The allegations of the complaints in both the first and second Florida suits are substantially identical.

On October 20, 1952, petitioner filed a Motion for Stay of Proceedings in this second suit on the claimed ground that the pendency of her suit for limited divorce and/or separate maintenance filed in the District of Columbia was

a bar to the maintenance of this second divorce suit in Florida. In this Motion, petitioner also requested an extension of time to file her answer to the complaint.

On October 21, 1952, in the second suit, the Florida court denied petitioner's Motion for Stay of Proceedings.

On October 24, 1952, in the second suit, petitioner filed her answer to the complaint denying its allegations, seeking a stay of the second suit until determination of the District of Columbia suit, and a dismissal of the complaint. *Petitioner did not counter-claim for divorce and did not pray for any relief excepting as just stated.*

On February 4, 1953, the second Florida suit was tried on its merits before the same Circuit Judge who had tried the first suit. At the beginning of the trial, petitioner filed with the court an amendment to her answer attached to which were copies of certain proceedings in her District of Columbia suit for limited divorce and/or separate maintenance which had been tried *ex parte,* including the judgment awarding her the limited divorce dated December 17, 1952.

On the trial of the second Florida divorce suit, petitioner and respondent each offered in evidence, which was accepted by the court, all the record of, and all of the testimony and documents theretofore tendered by them respectively in the first Florida suit, and each of them adduced additional testimony by their own persons and by witnesses. The record of the trial in this second suit occupies about 1,000 pages.

On February 12, 1953, the Florida court entered its final decree in the second divorce suit granting a final decree of absolute divorce in favor of respondent, the recital in the decree being that the testimony was ample to sustain the grounds of divorce alleged in the complaint in the second suit.

On February 27, 1953, petitioner filed a Petition for Rehearing, which was denied on March 20, 1953.

On April 6, 1953, petitioner filed an extraordinary motion to vacate the final decree, which motion was denied on April 7, 1953.

The case went to the Supreme Court of Florida on the petition of petitioner, and that Court, on June 15, 1954, affirmed the Florida trial court, holding that the evidence was more than sufficient to sustain the trial judge in his finding that the petitioner had been guilty of habitual intemperance, and that the ground was not an issue in the District of Columbia proceeding but was an issue in the Florida proceeding.

REASONS FOR DENYING THE WRIT

The decision of the court below does not call for review by this court and no useful purpose would be served thereby. The only question raised by the petition is whether a judgment for a *limited* divorce obtained by petitioner in the District of Columbia on the ground of desertion in an *ex parte* proceeding is a bar to a fully litigated suit for an *absolute* divorce filed by respondent in Florida on the grounds of habitual intemperance, extreme cruelty and desertion. *No question is here presented as to the effect of the Florida decree on the District of Columbia decree awarding real and personal property to petitioner.* Petitioner does not suggest anywhere that the District of Columbia proceeding was instituted by her (immediately following the dismissal without prejudice of the first Florida suit and immediately preceding the second Florida suit) other than for the primary purpose of obtaining exclusive title to real and personal property situate in the District of Columbia and for the secondary purpose of preventing respondent from obtaining, if possible, an absolute divorce in the jurisdiction of his domicile. The fact is that petitioner did not seek any relief in the District of Colum-

bia suit which she could not have received in the first or second Florida suits if she had sought the same.[1]

A

Petitioner first urges that the court below erred in failing to dismiss the suit for *absolute* divorce brought by respondent in view of the fact that a prior judgment for a *limited* divorce had been obtained by petitioner in the District of Columbia. This contention, obviously, is without merit.

The record shows that petitioner personally and voluntarily appeared in the Florida proceeding and vigorously defended the charges brought against her in that suit. Petitioner filed an answer denying respondent's allegations and at the trial she testified at length and produced others to testify in her behalf. It is clear from the record that she was afforded her day in court with respect to every issue involved in the Florida litigation, including the jurisdictional issue of respondent's domicile. That the jurisdiction of the Florida court to enter a valid decree of absolute divorce was dependent upon respondent's domicile in that State is not disputed. This requirement was recognized by the Florida court and was resolved by a finding that respondent was a domiciliary of that State.[2] Considered in its entirety, the record shows that petitioner submitted herself to the jurisdiction of the Florida court and is therefore bound by its determination that it had jurisdiction of the subject matter and of the parties. *Davis* v. *Davis* (1938), 305 U.S. 32, 42; 83 L. ed. 26, 31, among others.

Petitioner does not in any wise suggest that she repudi-

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[1] In the first Florida suit, the court, in its decree, stated that the husband (respondent herein) would be entitled to a divorce on the ground of extreme cruelty with an appropriate lump sum or periodic, or a combination of both, alimony to the defendant (petitioner herein).

[2] Respondent removed to Florida in February of 1952 with the intention and purpose of establishing his permanent legal residence in that State and has resided in that State continuously since that time.

ates her apearance in the Florida action or the defenses interposed by her, or that the Florida decree is invalid in any way, or in fact, that there is any colorable basis for challenging it other than to now urge, after the decision was adverse to her, that the court below erred in not dismissing the proceeding on the theory of *res judicata* or estoppel by judgment. As previously stated, petitioner did not seek any relief in the independent proceeding instituted by her in the District of Columbia that could not have been obtained in the first or second Florida proceedings instituted by respondent.[3]

On the basis of this Court's decision in *Alton* v. *Alton*, — U. S. —; 98 L. ed. (Advance, p. 660, decided June 1, 1954), it would appear that no useful purpose would be served by reviewing the decision of the court below.

B

Petitioner's contention that the judgment obtained by her in the District of Columbia operated as *res judicata* upon the Florida proceeding or, in any event, worked an estoppel by judgment, disregards the rule that the doctrine of *res judicata* applies only to adjudications *based upon the same causes of action and in which the parties fully litigated the issues.* 30 Am. Jur., Sec. 172, page 914.

The cause of action in the District of Columbia proceeding was different from the causes of action in the Florida proceedings. In the former proceeding, petitioner merely alleged desertion and cruelty as grounds for *limited* divorce and/or separate maintenance, while in the latter proceeding, respondent alleged habitual intemperance together with extreme cruelty and desertion as grounds for *absolute* divorce. The record shows that although habitual intemperance was not an issue in the District of Colum-

[3] See footnote 1, *supra.*

bia proceeding, it was an important issue in the Florida proceeding.[4]

The causes of action in the two suits obviously were not the same and, accordingly, the issues in the Florida suit had not been previously adjudicated in the District of Columbia suit as petitioner contends.[5]

Assuming, *arguendo,* that the causes of action in the Florida and District of Columbia proceedings were identical, nevertheless, the doctrine of *res judicata* is not applicable to the Florida proceeding because the issues in the District of Columbia proceeding were not fully litigated by the parties as above and below shown. Petitioner cannot deny that the judgment obtained by her in the District of Columbia court was obtained on *ex parte* proof and in a case where respondent was not served within the jurisdiction of the District of Columbia Court, did not appear and did not defend.

It is apparent from the record that the relief sought by petitioner in the District of Columbia was entirely different from the relief sought by respondent in Florida. *The relief sought by respondent in Florida was obtained only after all of the issues had been fully litigated by both parties.*

Under the above circumstances, the court below was wholly justified in rejecting petitioner's contention that the

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[4] See Opinion of Supreme Court of Florida set forth in full in Appendix B at page 11 of Petition for Writ of Certiorari. The court below correctly found that the evidence was more than sufficient to sustain the finding of the Circuit Court that petitioner had been guilty of habitual intemperance.

[5] Petitioner's reference (at page 5 of the Petition) to the husband's contention that the wife's excessive drinking was the cause of the separation, followed by the statement that the District of Columbia court first held that the wife was without fault, is misleading because in the *ex parte* proceeding in the District of Columbia, there was no issue as to whether petitioner was guilty of excessive drinking. In other words, the issue of excessive drinking on the part of the wife was litigated in the Florida court for the first time and there could be no question of re-litigation in that proceeding.

judgment of the District of Columbia court was either *res judicata* or that it worked an estoppel of respondent's suit for absolute divorce in Florida.

C

Petitioner further contends that the court below erred in failing to give "full faith and credit" to the prior judgment for limited divorce entered by the District of Columbia court. There are several answers to this argument.

1. The prior judgment of the District of Columbia court granting a limited divorce to petitioner is not entitled to full faith and credit as would be the case had both spouses been before the District of Columbia court and the issues fully litigated in that jurisdiction. From this record, we know what happened in the District of Columbia proceeding. The record conclusively shows (a) that respondent was not personally served in the District of Columbia; (b) that he did not enter an appearance; (c) that he did not retain an attorney to represent him in the proceeding; and (d) that the judgment in favor of petitioner was entered solely on *ex parte* proof. It cannot be said that respondent was afforded his day in court with respect to the litigation in the District of Columbia as was the case with respect to the petitioner in Florida. The judgment of the District of Columbia court presumes jurisdiction over the persons unless disproved by the record itself. In the instant case, the presumption is overcome by the showing in the record that respondent never was served in the District of Columbia and at no time appeared in the case (R. 21, 23A, 47B, 48, 50, 56).

A judgment for limited divorce is not entitled to full faith and credit if it was entered in a proceeding in which the defendant was not personally served in the jurisdiction of the forum and in which he did not enter his appearance. *May* v. *Anderson*, 345 U. S. 528, 533; 97 L. ed. 1223. We

think it is clear as a matter of constitutional law that Florida is free to decide for itself the effect of the District of Columbia judgment when respondent was a stranger to that decree. *Sutton* v. *Leib* (1952), 342 U.S. 402, 410; 96 L. ed. 448; 72 S. Ct. 398.

In the event both parties had been before the District of Columbia court, the decree would have been conclusive as to the issues of fact upon which it was based. *Harding* v. *Harding,* 198 U.S. 317; 49 L. ed. 1066; 25 S. Ct. 679. But insofar as it attempts to regulate the future conduct of the parties, an *ex parte* decree for judicial separation is necessarily local in its operation on the nonappearing defendant. It is difficult to see upon what theory petitioner claims extraterritorial effect for the District of Columbia decree as against a nonresident, nonappearing defendant not served with process. *May* v. *Anderson, supra; Pettis* v. *Pettis,* 91 Conn. 608; 101 Atl. 13; 4 ALR 852, 858.

2. The prior judgment of the District of Columbia Court was for a limited divorce. Under no circumstances does the full faith and credit clause compel Florida to give the limited divorce decree of the District of Columbia court a greater effect than it has in the District of Columbia. In other words, petitioner is claiming, in effect, that Florida cannot grant an *absolute* divorce to a person domiciled in that State because the spouse prior thereto obtained a *limited* divorce in the District of Columbia. *Sherrer* v. *Sherrer* (1948), 334 U.S. 343; 92 L. ed. 1429; 68 S. Ct. 1087, 1097. In the case of *Davis* v. *Davis, supra.* this Court disposed of that contention against petitioner's claim because the wife in that case had entered a special appearance merely to contest jurisdiction.

3. In this case there exists none of the reasons which would prevent the Florida court, under the full faith and credit clause, from granting to respondent an absolute divorce. As a domiciliary of Florida, respondent was entitled

to invoke the jurisdiction of the courts of that State. Respondent frankly presented to the Florida court the grounds on which he sought release. Petitioner had actual notice of the suit and voluntarily appeared and defended in person and through attorneys. In view of these facts and of her conduct, adjudged repugnant to the marital relation, and as to which the court below found more than sufficient evidence, it would be unreasonable to hold that the Florida court was bound, under the full faith and credit clause, to deny respondent the absolute divorce he sought merely because petitioner's suit for a limited divorce was brought to an earlier conclusion, although filed only a few days prior to respondent's suit.

CONCLUSION

For the reasons stated, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

LUCIEN H. MERCIER,

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Counsel for Respondent.

October 18, 1954.

Office - Supreme Court, U. S.
FILED
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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

NO. 349

MARY COOLEY ROY,
Petitioner,

v.

LEONARD C. ROY, SR.,
Respondent.

Petition for Rehearing on a Petition for a Writ of Certiorari To the Supreme Court of Florida

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IN THE

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OCTOBER TERM, 1954

NO. 349

MARY COOLEY ROY,
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LEONARD C. ROY, SR.,
Respondent.

Petition for Rehearing on a Petition for a Writ of Certiorari To the Supreme Court of Florida

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To the Honorable, the Chief Justice of the United States, and Associate Justices of the Supreme Court of the United States:

Comes now the petitioner and presents this petition for a rehearing on a petition for writ of certiorari in this case.

JURISDICTION

The petition for a writ of certiorari was filed herein and denied on November 8, 1954. This petition for rehearing is filed within twenty-five days from that date in accordance with Rule 58 of this Court.

REASONS FOR THE PETITION FOR REHEARING

In applying for this rehearing, petitioner reiterates each and every ground set forth in the original petition, and further suggests to the Court as follows:

I. There was another ground available to petitioner, although not previously presented:

The facts have heretofore been stated in the original petition and will not be repeated here. In the reply to that petition, respondent made much of the fact that the judgment in the District of Columbia was a default judgment and not obtained on personal service. The record in this case indicates that petitioner (plaintiff) was domiciled in the District of Columbia; that the respondent (defendant) was served personally with the process from the District of Columbia court in the State of Florida. This service was made conformably to the statute in the District of Columbia, and the respondent chose to ignore the action there pending.

It is respectfully submitted that the courts of one state are bound to give full faith and credit to the divorce decrees of another state or the District of Columbia rendered in favor of a plaintiff domiciled in the divorce forum against a non-resident defendant upon constructive service and without appearance. See *Williams* v. *North Carolina* (1942), 317 U.S. 287, 87 L. Ed. 279; 157 ALR 1400, 163 ALR 368.

It is again respectfully urged that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remains unmodified. *U. S.* v. *Munsingwear, Inc.*, 340 U. S. 39, 95 L. Ed. 367.

As appears in the original petition herein, the petitioner wife, after being married to the respondent for more than thirty years, and after receiving an adjudication that she was without fault in the separation, is cut off from any relief by way of alimony by a subsequent decree of the

Florida Court based on the latter court's finding on the question of fault which was to the contrary to that found by the first court. As urged in the original petition, this action on the part of the Florida Court contravened Article IV of the Constitution and this Court's decision in *Harding* v. *Harding,* 198 U. S. 317.

CONCLUSION

For the reasons already argued in her original petition, and for further reasons contained herein, it is respectfully urged that a rehearing be granted; that upon further consideration, the order of November 8, 1954, denying the petition for certiorari be revoked and that a writ of certiorari issue.

CERTIFICATE

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

Respectfully submitted,

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